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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

HAROLD LITWIN,  
Plaintiff,

v.

THE MICHAELS COMPANIES, INC.,  
JAMES A. QUELLA, JOSH BEKENSTEIN,  
ASHLEY BUCHANAN, MARK S. COSBY,  
RYAN COTTON, MONTE E. FORD,  
KAREN KAPLAN, MATTHEW S. LEVIN,  
JOHN J. MAHONEY, and BERYL B. RAFF,  
Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Harold Litwin ("Plaintiff"), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1           1.       Plaintiff brings this action against The Michaels Companies, Inc. (“Michaels” or the  
2 “Company”) and the members of its Board of Directors (the “Board” or the “Individual  
3 Defendants”) for their violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934  
4 (the “Exchange Act”), 15 U.S.C. §§ 78n(e), 78t(a), and to enjoin the expiration of a tender offer (the  
5 “Tender Offer”) on a proposed transaction, pursuant to which Michaels will be acquired by  
6 investment funds managed by affiliates of Apollo Global Management, Inc. (“Apollo”), through  
7 Magic AcquireCo, Inc. (“Parent”) and Magic MergeCo, Inc. (“Purchaser”) (the “Proposed  
8 Transaction”).  
9

10           2.       On March 3, 2021, Michaels and Apollo issued a joint press release announcing that  
11 they had entered into an Agreement and Plan of Merger (the “Merger Agreement”) dated March 2,  
12 2021, to sell Michaels to investment funds managed by Apollo. Under the terms of the Merger  
13 Agreement, Apollo will acquire all outstanding shares of Michaels for \$22.00 in cash per share of  
14 Michaels common stock (the “Offer Price”). Pursuant to the Merger Agreement, Purchaser  
15 commenced the Tender Offer on March 16, 2021. The Tender Offer is scheduled to expire at one  
16 minute after 11:59 p.m., New York City Time, on Wednesday, April 12, 2021. The Proposed  
17 Transaction is valued at approximately \$5 billion.  
18

19           3.       On March 16, 2021, Michaels filed a Solicitation/Recommendation Statement on  
20 Schedule 14D-9 (the “Recommendation Statement”) with the SEC. The Recommendation  
21 Statement, which recommends that Michaels’ stockholders tender their shares in favor of the  
22 Proposed Transaction, omits or misrepresents material information concerning, among other things:  
23 (i) the Company’s financial projections and the financial analyses supporting the fairness opinion  
24 provided by the Board’s financial advisor, UBS Securities LLC (“UBS”); and (ii) potential conflicts  
25 of interest faced by Company insiders. Defendants authorized the issuance of the false and  
26 misleading Recommendation Statement in violation of Sections 14(e) and 20(a) of the Exchange  
27 Act.  
28

1 Act.

2 4. In short, the Proposed Transaction will unlawfully divest Michaels's public  
3 stockholders of the Company's valuable assets without fully disclosing all material information  
4 concerning the Proposed Transaction to Company stockholders. To remedy defendants' Exchange  
5 Act violations, Plaintiff seeks to enjoin the expiration of the Tender Offer unless and until such  
6 problems are remedied.

7  
8 **JURISDICTION AND VENUE**

9 5. This Court has jurisdiction over the claims asserted herein for violations of Sections  
10 14(e) and 20(a) of the Exchange Act pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa,  
11 and 28 U.S.C. § 1331 (federal question jurisdiction).

12 6. This Court has jurisdiction over the defendants because each defendant is either a  
13 corporation that conducts business in and maintains operations within this District, or is an  
14 individual with sufficient minimum contacts with this District so as to make the exercise of  
15 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.  
16

17 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's  
18 claims arose in this District, where a substantial portion of the actionable conduct took place, where  
19 most of the documents are electronically stored, and where the evidence exists. Michaels maintains  
20 and operates several retail locations in this District. Moreover, each of the Individual Defendants,  
21 as Company officers or directors, either resides in this District or has extensive contacts within this  
22 District.  
23

24 **PARTIES**

25 8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of  
26 Michaels.  
27





1           25.     On March 4, 2021, the Company announced its fourth quarter and full year fiscal  
2 2020 financial results, reporting for the quarter: Net Sales of \$1.9 billion, up from \$1.7 billion in the  
3 same period of the prior year; Operating Income of \$342 million, up from \$275 million in the same  
4 quarter of the prior year; Net Income of \$255.1 million, up from \$181.7 million in the  
5 corresponding quarter of 2019; and Diluted Earnings per Share of \$1.72, improved from \$1.24 in  
6 the prior year.

7  
8 **The Proposed Transaction**

9           26.     On March 3, 2021, Michaels and Apollo issued a joint press release announcing the  
10 Proposed Transaction. The press release states, in relevant part:

11           IRVING, Texas & NEW YORK -- The Michaels Companies (NASDAQ: MIK)  
12 (“Michaels” or “the Company”) and funds managed by affiliates of Apollo Global  
13 Management, Inc. (NYSE:APO) (together with its consolidated subsidiaries  
14 “Apollo”) today announced that they have entered into a definitive merger agreement  
15 pursuant to which investment funds managed by affiliates of Apollo have agreed to  
16 acquire the Company in a transaction that values Michaels at an equity value of  
17 approximately \$3.3 billion (for a transaction valued at \$5.0 billion).

18           Under the terms of the agreement, which has been unanimously approved by the  
19 Michaels Board of Directors, Apollo will commence a tender offer to acquire all  
20 outstanding shares of Michaels for \$22.00 per share in cash. The purchase price  
21 represents a 47% premium to the closing stock price on February 26, 2021 (the last  
22 trading day prior to press speculation about a potential transaction involving  
23 Michaels) of \$15.00 per share and a 78% premium to the 90-day volume-weighted  
24 average price.

25           “The Company’s impressive growth transformation, including our financial and  
26 operational performance in the unprecedented environment of the pandemic, led to  
27 an unsolicited offer to buy the company,” said James Quella, Chairman of the  
28 Michaels Board of Directors. “Following that offer, the board undertook a  
comprehensive process to test the market and to evaluate the value maximizing path  
forward for shareholders. The Board of Directors, informed by that process, firmly  
believes Apollo’s offer represents a compelling value to our shareholders. It has  
been a privilege to work with Ashley and the management team as they coalesced  
around the transformation strategy, reimagined the Michaels omni-channel  
experience, and drove strong business outcomes in a challenging retail  
environment.”

1 “Our Michaels strategy and the work that we have done in the past year have led to  
2 phenomenal business results, strengthened our core business and positioned  
3 Michaels for long-term sustainable growth,” said Ashley Buchanan, Chief Executive  
4 Officer of Michaels. “We are excited to enter into this new chapter together with  
5 Apollo, who shares our strategic vision for Michaels as an omnichannel retailer that  
6 offers a one-stop-shop experience for the entire Michaels community. As a private  
7 company, we will have financial flexibility to invest in, expand, and improve our  
8 retail and digital platforms.”

9 Andrew S. Jhavar, Senior Partner and Head of the Retail and Consumer Group at  
10 Apollo, said, “On behalf of the Apollo Funds, we are delighted about this transaction  
11 with Michaels, which has continued to elevate its position as the leading player in the  
12 exciting arts and crafts industry. Michaels is the go-to-destination in arts and crafts  
13 for the deepest breadth of assortment with best-in-class customer service. We  
14 believe there is a significant opportunity to enhance the Michaels brand, store  
15 experience and omnichannel offering to its customers across North America. Our  
16 team at Apollo expects to leverage many of the strategies from our funds’ successful  
17 investments in other specialty retailers and grocers with Michaels. We are looking  
18 forward to working with the management team and the over 45,000 team members at  
19 Michaels in further enhancing the Company’s retail and digital channels as the most  
20 inspiring and engaging experience in the arts and crafts industry.”

21 The closing of the transaction is subject to customary closing conditions, including  
22 the expiration or termination of certain regulatory periods and the tender of shares  
23 representing at least a majority of the Company’s outstanding common stock to  
24 Apollo, and is expected to close in Michaels’ first half of the Company’s fiscal year.  
25 Following the successful completion of the tender offer, Apollo managed funds will  
26 acquire all remaining shares not tendered in the tender offer through a second-step  
27 merger at the same price. The transaction will be financed through a combination of  
28 equity provided by Apollo managed funds as well as a committed debt financing  
package to be provided by Credit Suisse, Barclays, Wells Fargo, RBC Capital  
Markets, Deutsche Bank, Mizuho, and Bank of America.

The merger agreement provides for a “go-shop” period, during which Michaels –  
with the assistance of UBS Investment Bank, its exclusive financial advisor – will  
actively solicit, evaluate and potentially enter into negotiations with and provide due  
diligence access to parties that submit alternative proposals. The go-shop period is  
25 calendar days, commencing today. Michaels will have the right to terminate the  
merger agreement to enter into a superior proposal subject to the conditions and  
procedures specified in the merger agreement, which Michaels will file with a  
Current Report on Form 8-K. There can be no assurance this process will result in a  
superior proposal. Michaels does not intend to disclose developments about this  
process unless and until its Board of Directors has made a decision with respect to  
any potential superior proposal.

Upon the completion of the transaction, Michaels will become a privately held company and shares of MIK common stock will no longer be listed on any public market.

### **Insiders' Interests in the Proposed Transaction**

28. Michaels' insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Michaels.

29. Notably, Company insiders stand to reap substantial financial benefits for securing the deal with Apollo. The following table sets forth the cash payments the Company's executive officers and directors will receive in connection with tendering their shares in the Tender Offer:

| Name of Executive Officer or Director | Number of Shares | Cash Consideration for Shares (\$) |
|---------------------------------------|------------------|------------------------------------|
| <i>Directors</i>                      |                  |                                    |
| Josh Bekenstein                       | 0                | 0                                  |
| Ashley Buchanan(1)                    | N/A              | N/A                                |
| Mark S. Cosby                         | 133,933          | 2,946,526                          |
| Ryan Cotton                           | 0                | 0                                  |
| Monte E. Ford                         | 17,401           | 382,822                            |
| Karen Kaplan                          | 29,637           | 652,014                            |
| Matthew S. Levin                      | 15,905           | 349,910                            |
| John J. Mahoney                       | 39,503           | 869,066                            |
| James A. Quella                       | 32,690           | 719,180                            |
| Beryl B. Raff                         | 41,063           | 903,386                            |
| <i>Executive Officers</i>             |                  |                                    |
| Ashley Buchanan                       | 250,841          | 5,518,502                          |
| Michael Diamond                       | 0                | 0                                  |
| Heather Bennett                       | 0                | 0                                  |
| Tim Cheatham                          | 0                | 0                                  |
| J. Robert Koch                        | 24,165           | 531,630                            |
| James E. Sullivan                     | 49,890           | 1,097,580                          |

30. Moreover, upon consummation of the Proposed Transaction, all vested and unvested Company options, restricted shares, restricted stock units ("RSUs"), performance-based restricted stock units ("PSUs"), and RSUs subject to both time and performance-based vesting conditions ("MSU") will be converted into the right to receive cash payments, as set forth in the following table:



| Name of Executive Officer or Director | Cash Consideration for Shares (\$) | Cash Consideration for Stock Options (\$) | Cash Consideration for Restricted Shares (\$) | Cash Consideration for RSUs (\$) | Cash Consideration for PSUs (\$) | Cash Consideration for MSUs (\$) | Total Cash Consideration in connection with the Offer and the Merger (\$) |
|---------------------------------------|------------------------------------|---|---|----------------------------------|----------------------------------|----------------------------------|---|
| <i>Directors</i>                      |                                    |   |   |                                  |                                  |                                  |   |
| Josh Bekenstein                       | 0                                  | 0   | 0   | 0                                | 0                                | 0                                | 0   |
| Ashley Buchanan(1)                    | N/A                                | N/A                                       | N/A   | N/A                              | N/A                              | N/A                              | N/A   |
| Mark S. Cosby                         | 2,946,526                          | 10,431,800                                | 395,824                                       | 2,100,978                        | 0                                | 0                                | 15,875,128  |
| Ryan Cotton                           | 0                                  | 0   | 0   | 0                                | 0                                | 0                                | 0   |
| Monte E. Ford                         | 382,822                            | 0   | 0   | 337,700                          | 0                                | 0                                | 720,522   |
| Karen Kaplan                          | 652,014                            | 0   | 0   | 337,700                          | 0                                | 0                                | 989,714   |
| Matthew S. Levin                      | 349,910                            | 0   | 0   | 337,700                          | 0                                | 0                                | 687,610   |
| John J. Mahoney                       | 869,066                            | 0   | 0   | 337,700                          | 0                                | 0                                | 1,206,766   |
| James A. Quella                       | 719,180                            | 0   | 0   | 337,700                          | 0                                | 0                                | 1,056,880   |
| Beryl B. Raff                         | 903,386                            | 0   | 0   | 337,700                          | 0                                | 0                                | 1,241,086   |
| <i>Executive Officers</i>             |                                    |   |   |                                  |                                  |                                  |   |
| Ashley Buchanan                       | 5,518,502                          | 6,637,500                                 | 0   | 10,795,576                       | 0                                | 6,222,533                        | 29,174,111  |
| Michael Diamond                       | 0                                  | 0   | 0   | 1,697,410                        | 0                                | 361,733                          | 2,059,143   |
| Heather Bennett                       | 0                                  | 0   | 0   | 222,222                          | 0                                | 306,089                          | 528,311   |
| Tim Cheatham                          | 0                                  | 0   | 0   | 222,222                          | 0                                | 306,089                          | 528,311   |
| J. Robert Koch                        | 531,630                            | 1,192,030                                 | 0   | 2,965,402                        | 632,918                          | 306,089                          | 5,628,069   |
| James E. Sullivan                     | 1,097,580                          | 276,460                                   | 0   | 1,771,088                        | 316,448                          | 186,444                          | 3,648,020   |
| Joe Venezia                           | 0                                  | 0   | 0   | 222,222                          | 0                                | 306,089                          | 528,311   |
| Hsaio Wang                            | 0                                  | 0   | 0   | 2,647,854                        | 0                                | 306,089                          | 2,953,943   |
| Brynn Evanson                         | 0                                  | 0   | 0   | 826,430                          | 0                                | 306,089                          | 1,132,519   |

31. Further, each long-term cash incentive award subject to vesting restrictions (“Company LTI Award”) will vest and entitle Company insiders to receive the Merger Consideration, as set forth in the following table:

| Name of Executive Officer or Director | Company LTI Payment Amount (\$) |
|---------------------------------------|---------------------------------|
| <i>Directors</i>                      |                                 |
| Josh Bekenstein                       | 0                               |
| Ashley Buchanan                       | 0                               |
| Mark S. Cosby                         | 0                               |
| Ryan Cotton                           | 0                               |
| Monte E. Ford                         | 64,650                          |
| Karen Kaplan                          | 64,650                          |
| Matthew S. Levin                      | 64,650                          |
| John J. Mahoney                       | 64,650                          |
| James A. Quella                       | 64,650                          |
| Beryl B. Raff                         | 64,650                          |
| <i>Executive Officers</i>             |                                 |
| Ashley Buchanan                       | 0                               |
| Michael Diamond                       | 0                               |
| Heather Bennett                       | 0                               |
| Tim Cheatham                          | 550,000                         |
| J. Robert Koch                        | 440,000                         |
| James E. Sullivan                     | 268,000                         |
| Joe Venezia                           | 0                               |
| Hsaio Wang                            | 294,546                         |
| Brynn Evanson                         | 0                               |

32. In addition, if they are terminated in connection with the Proposed Transaction, Michaels' named executive officers will receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

| Name            | Cash<br>\$(1) | Equity<br>\$(2) | Perquisites/<br>Benefits<br>\$(3) | Other<br>\$(4) | Total<br>\$(5) |
|-----------------|---------------|-----------------|-----------------------------------|----------------|----------------|
| Ashley Buchanan | 2,685,573     | 23,655,609      | 16,500                            | 1,762,278      | 28,119,960     |
| Mark Cosby      | 33,137        | 12,928,602      | 0                                 | 0              | 12,961,739     |
| Chuck Rubin     | 0             | 0               | 0                                 | 0              | 0              |
| Michael Diamond | 729,710       | 2,059,143       | 16,500                            | 0              | 2,805,353      |
| Denise Paulonis | 0             | 0               | 0                                 | 0              | 0              |
| Vidya Jwala     | 0             | 0               | 0                                 | 0              | 0              |
| J. Robert Koch  | 790,333       | 5,096,439       | 16,500                            | 440,000        | 6,343,272      |
| Philo Pappas    | 0             | 424,569         | 0                                 | 0              | 424,569        |

**The Recommendation Statement Contains Material Misstatements or Omissions**

33. Defendants filed a materially incomplete and misleading Recommendation Statement with the SEC and disseminated it to Michaels' stockholders. The Recommendation Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed decision whether to tender their shares in favor of the Proposed Transaction or seek appraisal.

34. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) the Company's financial projections and the financial analyses supporting the fairness opinion provided by the Board's financial advisor, UBS; and (ii) potential conflicts of interest faced by Company insiders.

***Material Omissions Concerning the Company's Financial Projections and UBS' Financial Analyses***

35. The Recommendation Statement omits material information regarding the Company's financial projections.

1           36. For example, the Recommendation Statement fails to disclose the line items  
2 underlying the following financial metrics: (i) Reported EBITDA; (ii) Adjusted EBITDA; and (iii)  
3 Normalized EBITDA.

4           37. The Recommendation Statement also omits material information regarding UBS'  
5 financial analyses.

6           38. The Recommendation Statement describes UBS' fairness opinion and the various  
7 valuation analyses performed in support of its opinion. However, the description of UBS' fairness  
8 opinion and analyses fails to include key inputs and assumptions underlying these analyses.  
9 Without this information, as described below, Michaels' public stockholders are unable to fully  
10 understand these analyses and, thus, are unable to determine what weight, if any, to place on UBS'  
11 fairness opinion in determining whether to tender their shares in favor of the Proposed Transaction  
12 or seek appraisal.  
13

14           39. With respect to UBS' *Discounted Cash Flow Analysis*, the Recommendation  
15 Statement fails to disclose: (i) quantification of the inputs and assumptions underlying the discount  
16 rates ranging from 9.0% to 11.0%; (ii) UBS' rationale for utilizing terminal multiples of 6.0x to  
17 7.5x; (iii) quantification of the terminal values for the Company as of the 2025 fiscal year; (iv) the  
18 discount rates used to discount the equity value to present value as of January 30, 2021; (v) the net  
19 debt figure used in the analysis; (vi) the diluted share information utilized in the analysis; and (vii)  
20 whether the implied per share reference range applies to the estimated terminal value and the  
21 projected cash flows discounted to present value as of April 30, 2021, using the net debt and diluted  
22 share information; or the equity value discounted to present value as of January 30, 2021, using the  
23 net debt and diluted share information;  
24  
25

26           40. Without such undisclosed information, Michaels' stockholders cannot evaluate for  
27 themselves whether the financial analyses performed by UBS were based on reliable inputs and  
28

assumptions or whether they were prepared with an eye toward ensuring that a positive fairness opinion could be rendered in connection with the Proposed Transaction. In other words, full disclosure of the omissions identified above is required in order to ensure that stockholders can fully evaluate the extent to which UBS' opinion and analyses should factor into their decision whether to tender their shares in favor of or against the Proposed Transaction or seek appraisal.

41. The omission of this information renders the statements in the "Certain Company Management Forecasts" and "Opinion of the Financial Advisor to the Company Board" sections of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

***Material Omissions Concerning Company Insiders' Potential Conflicts of Interest***

42. The Recommendation Statement fails to disclose material information concerning the potential conflicts of interest faced by Company insiders.

43. For example, in the press release announcing the Proposed Transaction, Andrew S. Jhavar, Senior Partner and Head of the Retail and Consumer Group at Apollo, stated:

On behalf of the Apollo Funds, we are delighted about this transaction with Michaels, which has continued to elevate its position as the leading player in the exciting arts and crafts industry. Michaels is the go-to-destination in arts and crafts for the deepest breadth of assortment with best-in-class customer service. We believe there is a significant opportunity to enhance the Michaels brand, store experience and omnichannel offering to its customers across North America. Our team at Apollo expects to leverage many of the strategies from our funds' successful investments in other specialty retailers and grocers with Michaels. ***We are looking forward to working with the management team*** and the over 45,000 team members at Michaels in further enhancing the Company's retail and digital channels as the most inspiring and engaging experience in the arts and crafts industry.

Emphasis added.

44. The Recommendation Statement fails, however, to disclose the identities of Michaels' executive officers or directors that have secured employment with the Company post-close as well as the details of any retention-related discussions and negotiations that occurred

1 between Apollo and Michaels executive officers, including who participated in all such  
2 communications, when they occurred and their content. The Recommendation Statement further  
3 fails to disclose whether any of Apollo's proposals or indications of interest mentioned management  
4 retention or participation in the Company post-close.

5 45. Communications regarding post-transaction employment and merger-related  
6 benefits during the negotiation of the underlying transaction must be disclosed to stockholders.  
7 This information is necessary for Michaels' stockholders to understand potential conflicts of interest  
8 of management and the Board, as that information provides illumination concerning motivations  
9 that would prevent fiduciaries from acting solely in the best interests of the Company's  
10 stockholders.

12 46. The omission of this information renders the statements in the "Background and  
13 Reasons for the Company Board's Recommendation" section of the Recommendation Statement  
14 false and/or materially misleading in contravention of the Exchange Act.

16 47. The Individual Defendants were aware of their duty to disclose the above-referenced  
17 omitted information and acted negligently (if not deliberately) in failing to include this information  
18 in the Recommendation Statement. Absent disclosure of the foregoing material information prior to  
19 the expiration of the Tender Offer, Plaintiff and the other Michaels stockholders will be unable to  
20 make an informed decision whether to tender their shares in the Proposed Transaction or seek  
21 appraisal and are thus threatened with irreparable harm warranting the injunctive relief sought  
22 herein.

**CLAIMS FOR RELIEF**

**COUNT I**

**Claims Against All Defendants for Violations  
of Section 14(e) of the Exchange Act**

48. Plaintiff repeats all previous allegations as if set forth in full.

49. Defendants violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Tender Offer commenced in conjunction with the Proposed Transaction.

50. Defendants knew that Plaintiff would rely upon their statements in the Recommendation Statement in determining whether to tender his shares pursuant to the Tender Offer commenced in conjunction with the Proposed Transaction.

51. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares.

**COUNT II**

**Claims Against the Individual Defendants for  
Violation of Section 20(a) of the Exchange Act**

52. Plaintiff repeats all previous allegations as if set forth in full.

53. The Individual Defendants acted as controlling persons of Michaels within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Michaels and participation in or awareness of the Company's operations or

1 intimate knowledge of the false statements contained in the Recommendation Statement filed with  
2 the SEC, they had the power to influence and control and did influence and control, directly or  
3 indirectly, the decision-making of the Company, including the content and dissemination of the  
4 various statements which Plaintiff contends are false and misleading.

5         54. Each of the Individual Defendants was provided with or had unlimited access to  
6 copies of the Recommendation Statement and other statements alleged by Plaintiff to be misleading  
7 prior to or shortly after these statements were issued and had the ability to prevent the issuance of  
8 the statements or cause the statements to be corrected.  
9

10         55. In particular, each of the Individual Defendants had direct and supervisory  
11 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had  
12 the power to control or influence the particular transactions giving rise to the securities violations as  
13 alleged herein, and exercised the same. The Recommendation Statement at issue contains the  
14 unanimous recommendation of each of the Individual Defendants to approve the Proposed  
15 Transaction. They were, thus, directly involved in the making of this document.  
16

17         56. In addition, as the Recommendation Statement sets forth at length, and as described  
18 herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the  
19 Proposed Transaction. The Recommendation Statement purports to describe the various issues and  
20 information that they reviewed and considered — descriptions which had input from the Individual  
21 Defendants.  
22

23         57. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of  
24 the Exchange Act.

25                                   **PRAYER FOR RELIEF**  
26  
27

1 WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including  
2 injunctive relief, in his favor on behalf of Michaels, and against defendants, as follows:

3 A. Preliminarily and permanently enjoining defendants and all persons acting in concert  
4 with them from proceeding with, consummating, or closing the Proposed Transaction;

5 B. In the event defendants consummate the Proposed Transaction, rescinding it and  
6 setting it aside or awarding rescissory damages to Plaintiff;

7 C. Awarding Plaintiff the costs of this action, including reasonable allowance for  
8 Plaintiff's attorneys' and experts' fees; and  
9

10 D. Granting such other and further relief as this Court may deem just and proper.

11 **JURY DEMAND**

12 Plaintiff demands a trial by jury on all claims and issues so triable.

13 Dated: March 24, 2021

**WEISSLAW LLP**

14 By: /s/ Joel E. Elkins

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22 *Attorneys for Plaintiff*  
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